Nixon Data Held U.S.-Owned, But Order Is Stayed

Appeals Unit To Meet on Case Today

2/1/75

By Timothy S. Robinson
Washington Post Staff Writer

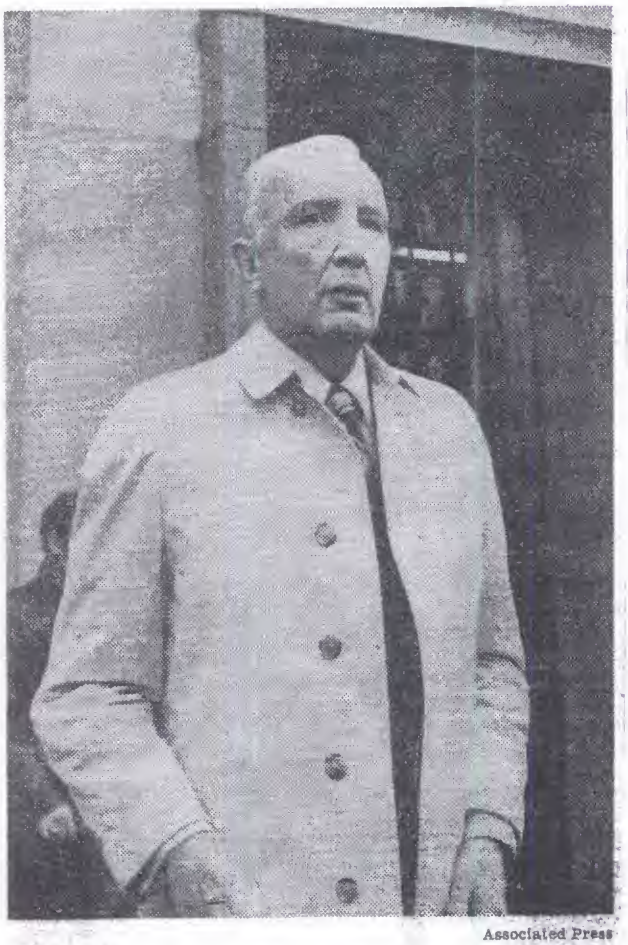
The tape recordings and documents produced in Richard M. Nixon's White House belong to the federal government rather than Nixon as the former President claimed, U.S. District Judge Charles R. Richey ruled yesterday.

But the effectiveness of Richey's ruling was immediately delayed by the U.S. Court of Appeals. In an order signed by Circuit Judges Spottswood Robinson and Malcolm Wilkey, the appeals court set an emergency hearing for 3 p.m. today, stayed Richey's order and temporarily ordered him to make no further rulings in the case.

Richey's ruling came about an hour after the appeals court had suggested that he instead decide first whether a three-judge panel should test the constitutionality of a recent law concerning the documents and tapes.

Richey had postponed ruling on convening that three-judge court until later in the case. His reasoning was that the issues he decided yesterday needed "immediate resolution" and could be ruled on irrespective of the constitutionality of the new legislation.

Richey's 98-page decision yesterday dealt with the main issues of ownership of the materials and Nixon's claim of presidential privilege. Attorneys in the case said the order is sure to be appealed.



Associated Press

Judge Richey leaves court after ruling in Nixon case.

Richey ruled that accepting Nixon's claim that he owned the tapes and documents would be "repugnant to the very nature of the office of the presidency."

"To uphold former President Nixon's claim of ownership would be to place him above the law . . . to compare him to a monarch," Richey wrote.

He rejected Nixon's claim of executive privilege, saying that only an incumbent President could assert that privilege on documents that belong to the Office of the Presidency.

He also said a Nov. 9 agreement approved by President Ford, which gives first access to the documents and tapes to the Watergate special prosecutor's office and which will go into effect if yesterday's ruling is upheld, does not violate Nixon's constitutional right against illegal searches.

But Richey did set up a procedure under which Nixon could claim that his privacy was being invaded through release of certain portions of the tapes or documents. Under the judge's plans, the court would be the final arbiter on such claims.

The rulings yesterday came in litigation that has grown in size and complexity since it was filed shortly after Nixon accepted a pardon last September.

In conjunction with the pardon, Nixon and General Services Administrator Arthur Sampson signed a White House-approved agreement giving Nixon sole custody and ownership of the tapes and

See TAPES, A6, Col. 1

Cover-up prosecutors urge rejection of new trial motions. Page A4.

Nixon Data Ruled U.S.-Owned

TAPES, From A1

documents from his White House years.

The special prosecutor's office and others protested that agreement, and President Ford subsequently said it would not be implemented pending a review. It was superseded by the Nov. 9 agreement, and the law passed by Congress in December, both of which affected various aspects of the issues over the tapes and documents.

The first court move was made by attorneys for Nixon, who filed suit in October attempting to force the government to implement the original agreement.

Attorneys for columnist Jack Anderson, meanwhile, had unsuccessfully sought access to the same materials under the Freedom of Information Act. They were allowed to join in the suit.

The special prosecutor's office also joined the suit to protect the interests of his office in the materials and tapes. Along the way, sitll more parties to the suit were added: the Reporters Committee for Freedom of the Press, which wanted access to the materials; the Committee for Public Justice, with a similar demand, and several members of Congress who were involved in then-pending legislation concerning the documents.

By the time yesterday's opinion was filed, it took more than two legal-size, typewritten pages merely to list the parties and the attorneys in the various civil actions.

Judge Richey, meanwhile, had issued a temporary order last October maintaining the status quo—the materials and tapes were to remain in the White House, and not shipped to Nixon in California.

Attorneys for Nixon asked for the original agreement to be implemented. The main claim they put forward was that he has a contitutional right and duty to protect and assert the privilege of confidentiality over the presidential papers and tapes, and that their ownership and control is an essential element of this right and duty.

Even a search of those materials for specific documents and tapes by the special prosecutor's office would violate his rights, Nixon claimed.

The first 42 pages of the opinion deal with the various claims put forth by the parties in the suit, the parties' standing and whether the case can be decided at this point.

Richey found that the plaintiffs who were involved through the Freedom of Information Act could participate in the suit, saying that to rule otherwise "would do great violence to the letter and the spirit" of the act.

He then ruled that the case could be decided now, because the Presidential Recordings and Materials Preservation Act passed in December did not resolve the questions of ownership or privilege.

Although that act provides for the issurance of regulations concerning public access to White House documents, Richey also said he felt he could rule on the Freedom of Information Act issues as well.

In finding that the federal government owned the tapes and documents, Richey rejected legal and historical arguments put forward by Nixon's attorneys.

He pointed out that it is a general principle of law that materials produced or kept by a public official in the course of his duties belong to the government.

To accept Nixon's claim of ownership, "it must be found that an individual President is distinguishable from other public servants," Richey said.

"Such a conclusion, however, is untenable as it is refuted by the Constitution and the very concept of the Office of President . . . (The) president, although elected to the highest office in the nation, is but a transient holder of the public trust," the judge wrote.

Richey also rejected Nixon's claim that he must have the documents from his presidency to insure the independence of the office of the President.

"To allow any one President to remove the documents, papers, tapes and other materials which contain information vital to the ongoing affairs of the nation would be totally disruptive to the Office of the Presidency and would impair the ability of his successor in office to properly carry out the duties and powers of the office," the judge said.

While not going so far as to rule that presidential tape recordings are covered by the Freedom of Information Act, Richey did say that many of the documents sent to the White House from other executive agencies now fall under the act.

The ruling explained in detail the concept of executive privilege, denying that there was any special presidential privilege that attaches to a former President.

Such a privilege belongs to the office itself, and not to any particular office-holder, the judge said.

Richey took judicial notice that nothing on the tapes could be used as evidence against the former President in a criminal proceeding, since Nixon has received an unconditional pardon.

He did conclude, however, with a specific outline for a procedure whereby Nixon could listen to tapes and examine documents before they are given to the prosecutor, in an attempt to protect against an invasion of the former President's right to privacy.

He suggested that the procedure could be used in connection with 138 boxes of papers and 900 tape-recorded conversations in which the prosecutor's office has expressed possible interest.

If Nixon raises such a claim, it will be up to him to prove to the court that the conversation or paper is personal, Richey said.

Lawyers familiar with the case said that although the ruling—if upheld—would have a major impact on the disposition of presidential materials by future chief executives, it probably could not be applied to past presidents.

Judge Richey said in his opinion that the practice of recent presidents of depositing materials in presidential libraries "may be considered not one of asserting a right to ownership, but of retention in trust for the public."